

EXHIBIT A

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMIE PETTIT, *et al.*,

Plaintiffs,

v.
PROCTER & GAMBLE CO.,

Defendant.

CASE NO: 15-cv-02150-RS

CLASS ACTION

[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND JUDGMENT

DATE:
TIME:
CTRM: 3
JUDGE: Hon. Richard Seeborg

As Amended by the Court

On April 6, 2015, Jamie Pettit filed a class action complaint against Defendant The Procter & Gamble Company (“P&G”) in the Superior Court of the State of California, County of San Francisco, Case No. CGC-15-545175, which was removed to the United States District Court, Northern District of California, by P&G on May 13, 2015 and assigned case number 3:15-cv-02150-RS. Pettit alleges in her complaint that P&G marketed and sold its Charmin Freshmates Flushable Wipes with the representation that they were “flushable,” “septic safe,” and “safe for sewer and septic systems,” although she alleges the wipes are not suitable for disposal by flushing down a toilet, are not regarded as flushable by municipal sewage system operators, do not disperse upon flushing, and routinely damage or clog plumbing pipes, septic systems, and sewage lines and pumps. Pettit alleges that P&G is liable for (a) violations of the California Consumers Legal Remedies Act, Cal. Civil Code § 1750 *et seq.*, (b) false advertising in violation of California Business and Professions Code § 17500 *et seq.*, (c) fraud, deceit, and/or misrepresentation, (d) negligent misrepresentation, and (e) unfair, unlawful and deceptive trade practices in violation of California Business and Professions Code § 17200 *et seq.*

On July 10, 2015, Plaintiff Karla Ramcharitar filed a class action complaint against P&G in the United States District Court, Southern District of Ohio, Case No. 1:15-cv-00457-MRB. Ramcharitar filed an amended complaint, adding new plaintiffs Gloria Wiltrakis and Cheryl Senko, on January 8, 2016. In their complaint, these plaintiffs make similar allegations as Pettit about the Charmin Freshmates Flushable Wipes and allege that P&G is liable for (a) breach of express warranty, (b) negligent design, (c) negligent misrepresentation, (d) failure to warn, (e) violations of the Florida Deceptive and Unfair Trade Practices Act, Florida Statutes § 501.201 *et seq.*, (f) unjust enrichment, (g) violation of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.*, (h) violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, § 805 Ill. Comp. Stat. § 505 (2007), (i) tortious breach of warranty, and (j) fraud.

On December 6, 2018, the *Ramcharitar* action was stayed pending resolution of this settlement. On November 5, 2018, via the agreed filing of an amended complaint, the three Plaintiffs from the *Ramcharitar* action were added as named Plaintiffs to the *Pettit* case before this Court, along with thirteen other individuals: Debra Jewell, Susan Hartzfel, Kenneth Luke,

1 Linda Feiges, Willie Perez, Dian Cotton, Marlena Hinkle, Phyllis Jones, Glenn Katz, Eilene
2 Shaffer, Charles Tippe, Sandra Flores, and Roxy Vance.

3 P&G denies that there is any factual or legal basis for Plaintiffs' allegations. It contends
4 that the labeling of the Charmin Freshmates product is truthful and non-misleading, and that
5 purchasers did not pay a "premium" for the wipes as the result of any misrepresentations. P&G
6 therefore denies any liability. P&G also denies that Plaintiffs or any other members of the
7 settlement class have suffered injury or are entitled to monetary or other relief. P&G denies that
8 this case should have been certified as a class action, except for purposes of settlement.

9 On November 26, 2018, this Court granted preliminary approval of a proposed settlement
10 between the parties. In the Preliminary Approval Order, *see* Dkt. No. 129, the Court
11 provisionally certified a Settlement Class of all Persons, other than Excluded Persons, who
12 purchased the Product in the United States between April 6, 2011 and November 26, 2018,
13 excluding purchases in the State of New York and purchases for purposes of resale. "Products"
14 means Charmin Freshmates Flushable Wipes and any other pre-moistened wipes sold under the
15 Charmin brand name bearing the word "flushable" on the package label. The Court also
16 approved the procedures for giving notice and the forms of notice. Additionally, in the
17 Preliminary Approval Order, the Court concluded that the parties' proposed settlement, as set
18 forth in the Settlement Agreement, was within the range of possible final approval.

19 Now pending before the Court is Plaintiffs' Motion for Final Approval of Class Action
20 Settlement and Application for Attorneys' Fees, Costs, and Class Representative Payments. In
21 accordance with the Preliminary Approval Order and the Settlement Agreement, on March 28,
22 2019, the Court held a duly noticed Fairness Hearing for purposes of: (a) determining the fairness,
23 adequacy, and reasonableness of the settlement; and (b) ruling upon an application by Class
24 Counsel for an award of fees, costs, and expenses.

25 The parties and the claim administrator have submitted evidence, which the Court accepts,
26 showing the following. Approximately 101 million online impressions of the notice were
27 displayed on a variety of websites (both mobile and desktop) targeted at likely members of the
28 Settlement Class. These notices appeared on pre-vetted websites and on the social media

1 platforms Facebook and Instagram. Notice also was published in the January 7, 2019 issue of
2 *People Magazine*, the February 2019 issue of *Good Housekeeping*, and the February 2019 issue
3 of *National Geographic*. These print publications have a combined circulation of over 10 million
4 and a combined readership of 90 million. A press release was issued in both English and Spanish
5 through the PR Newswire network, and articles about the settlement appeared in at least 294
6 publications. All of the online notices linked to, and the printed notices referred to, the
7 Settlement Website, which contains a detailed class notice, including the procedures for class
8 members to exclude themselves or object to the settlement, as well as a copy of the Settlement
9 Agreement and motion papers filed in connection with the settlement.

10 Approximately 180,000 timely claims were received after excluding claims for purchases
11 of the Product in the State of New York, which are not covered by this settlement. The claims
12 administrator is validating the claims that were received.

13 A total of 58 persons filed timely requests to opt out of the Settlement Class.

14 No class members filed objections to the settlement.

15 Having considered all matters submitted to it at the hearing on the motion and otherwise,
16 including the complete record of this action, and good cause appearing therefore, the Court
17 hereby grants the Motion for Final Approval of the Settlement and Application for Attorneys'
18 Fees, Costs, and Class Representative Payments, and finds and concludes as follows:

19 1. The capitalized terms used in this Final Approval Order and Judgment shall have the
20 same meaning as defined in the Settlement Agreement except as may otherwise be ordered.

21 2. The Court has jurisdiction over these cases and over all claims raised therein and all
22 Parties thereto.

23 **The Settlement Class**

24 3. The Court reaffirms its findings at preliminary approval that the prerequisites of Rule
25 23 of the Federal Rules of Civil Procedure have been satisfied for certification of the Settlement
26 Class for settlement purposes because: Settlement Class Members are ascertainable and are so
27 numerous that joinder of all members is impracticable; there are questions of law and fact
28 common to the Settlement Class; the claims and defenses of the Class Representatives are typical

1 of the claims and defenses of the Settlement Class they represent; the Class Representatives have
 2 fairly and adequately protected the interests of the Settlement Class with regard to the claims of
 3 the Settlement Class they represent; common questions of law and fact predominate over
 4 questions affecting only individual Settlement Class Members, rendering the Settlement Class
 5 sufficiently cohesive to warrant a class settlement; and the certification of the Settlement Class is
 6 superior to individual litigation and/or settlement as a method for the fair and efficient resolution
 7 of this matter. The Court additionally finds, for the reasons set forth in the motions for
 8 preliminary and final approval, that despite any differences among the laws of the various states,
 9 common issues of law and fact predominate, making certification of a nationwide (except New
 10 York) class appropriate under *In re Hyundai & Kia Fuel Econ. Litig.*, 881 F.3d 679 (9th Cir.
 11 2018).¹ In particular, the identical challenged marketing and labeling was provided to all class
 12 members; the various states require similar elements of proof with respect to the asserted claims
 13 in the complaints and common issues under those laws predominate; to the extent there are
 14 differences among the states, the plaintiffs, who are from seventeen different states,² have
 15 demonstrated that similarly situated states can be combined into subclasses and there exist named
 16 plaintiffs who can prove all elements of all claims for all variations of the state laws.

17 4. For purposes of the settlement and this Final Approval Order and Judgment, the Court
 18 hereby finally certifies the following Settlement Class: All Persons who purchased the Product in
 19 the United States between April 6, 2011 and November 26, 2018, excluding purchases in the
 20 State of New York and purchases for purposes of resale.

22 ¹ While the panel concluded in *Hyundai* that district courts must conduct “a rigorous
 23 predominance analysis under Rule 23(b)(3) to determine whether variations in state consumer
 24 protection laws” permit or preclude certification of a nationwide class, even in the settlement
 25 context, that holding is not currently precedential because the Ninth Circuit granted en banc
 26 review of the panel opinion. See *In re Hyundai & Kia Fuel Econ. Litig.*, 897 F.3d 1003, 1007
 27 (9th Cir. 2018). The Court nonetheless concludes that analysis is satisfied here for the reasons
 28 that follow.

2 ² The states of residence are as follows: Alabama (Jewell), Arizona (Hartzfeld), California (Pettit)
 27 Colorado (Luke), Florida (Ramcharitar), Illinois (Senko), Maryland (Feiges), Massachusetts
 28 (Perez), Michigan (Cotton), Missouri (Hinkle), Mississippi (Jones), New Jersey (Katz), Ohio
 (Wiltrakis), Pennsylvania (Shaffer), Rhode Island (Tippe), Texas (Flores), and West Virginia
 (Vance).

1 5. Excluded from the class are (1) Honorable Richard Seeborg, Honorable Sallie Kim
 2 (Mag.), Honorable Timothy S. Black, Robert A. Meyer, and any member of their immediate
 3 families; (2) any government entity; (3) P&G; (4) any entity in which P&G has a controlling
 4 interest; (5) any of P&G's subsidiaries, parents, affiliates, and officers, directors, employees, legal
 5 representatives, heirs, successors, or assigns; and (6) any persons who timely excluded
 6 themselves from the Settlement Class. The persons listed in Exhibit A to this Order timely
 7 submitted requests to exclude themselves and shall be excluded from the settlement class.

8 6. For the purpose of this settlement, the Court hereby finally certifies Plaintiffs Jamie
 9 Pettit, Karla Ramcharitar, Gloria Wiltraki, Cheryl Senko, Debra Jewell, Susan Hartzfel, Kenneth
 10 Luke, Linda Feiges, Willie Perez, Dian Cotton, Marlena Hinkle, Phyllis Jones, Glenn
 11 Katz, Eilene Shaffer, Charles Tippe, Sandra Flores, and Roxy Vance as Class Representatives,
 12 and Gutride Safier LLP; Spangenberg, Shibley & Liber, LLP; and Tycko & Zavareei LLP as
 13 Settlement Class Counsel.

14 **Notice Plan**

15 7. The Parties complied in all material respects with the Notice Plan set forth in the
 16 Settlement Agreement. The Notice Plan provided notice to class members by publication, rather
 17 than directly, but this is appropriate here where the evidence is undisputed that the parties do not
 18 know the names or contact information for class members, as the purchases were made at retail
 19 and P&G is a wholesaler. Under these circumstances, individualized notice was not required or
 20 reasonably practicable. *See, e.g., Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th Cir.
 21 2017) (recognizing that Rule 23 "does not insist on actual notice to all class members;" and
 22 "courts have routinely held that notice by publication in a periodical, on a website, or even at an
 23 appropriate physical location is sufficient to satisfy due process"); *In re Toys R Us-Delaware, Inc.*
 24 *FACTA Litigation*, 295 F.R.D. 438, 449 (C.D. Cal. 2014) ("When the court certifies a nationwide
 25 class of persons whose addresses are unknown, notice by publication is reasonable.").
 26 Accordingly, the Court finds that the Notice Plan set forth in the Settlement Agreement, and
 27 effectuated pursuant to the Preliminary Approval Order, constituted the best notice practicable
 28 under the circumstances and constituted due and sufficient notice to the Settlement Class of the

1 pendency of the litigation; the existence and terms of the Settlement Agreement; their rights to
 2 make claims, exclude themselves, or object; and the matters to be decided at the Final Approval
 3 Hearing. The Court also finds, based on the evidence described above, that the notice plan
 4 reached at least 72% of the settlement class members an estimated average of 2.6 times each.
 5 Dkt. 130-4, Finegan Decl. ¶ 4. This Notice Plan satisfied the requirements of the United States
 6 and California Constitutions, Rule 23 of the Federal Rules of Civil Procedure, and any other
 7 applicable law. *See, e.g., Ellison v. Steven Madden, Ltd.*, No. CV115935PSGAGRX, 2013 WL
 8 12124432, at *3 (C.D. Cal. May 7, 2013) (approving a notice plan reaching 77%); *In re:*
 9 *Whirlpool Corp. Front-loading Washer Prod. Liab. Litig.*, No. 1:08-WP-65000, 2016 WL
 10 5338012, at *9 (N.D. Ohio Sept. 23, 2016) (approving notice plan reaching approximately 77.5
 11 percent of Class Members); *see also Miller v. Ghirardelli Chocolate Co.*, No. 12-CV-04936-LB,
 12 2015 WL 758094, at *3 (N.D. Cal. Feb. 20, 2015) (approving similar publication notice plan in
 13 class action regarding grocery store item); *Arnold v. Fitflop USA, LLC*, No. 11-CV-0973 W KSC,
 14 2014 WL 1670133, at *5 (S.D. Cal. Apr. 28, 2014) (same for class action regarding shoes).

15 8. The Court has determined that full opportunity has been given to the members of the
 16 Settlement Class to exclude themselves from the settlement, object to the terms of the settlement
 17 or to Class Counsel's request for attorneys' fees, costs, and expenses and for payments to the
 18 Class Representatives, and otherwise participate in the Final Approval Hearing held on March 28,
 19 2019. The Court notes that no Class Member made any submissions or appeared at the final
 20 approval hearing for the purpose of objecting to the settlement. Out of an estimated 3.9 million
 21 class members, there were 58 opt-outs and no objections. Dkt. # 130-4, Finegan Decl., ¶ 5 n. 3;
 22 Dkt. # 132-2, Shaffer Decl. ¶¶ 14-15. In comparison, more than 180,000 timely claims were
 23 received, according to the report of the Settlement Administrator. Id. ¶ 16. While the Settlement
 24 Administrator is still validating the claims received and compiling the precise number of valid
 25 claims, the number of claims received equates to a claims rate of 4.6%, which exceeds the rate in

1 comparable settlements.³ *See Churchill Village, LLC v. General Electric*, 361 F.3d 566, 577 (9th
 2 Cir. 2004) (explaining that a court may infer appropriately that a class action settlement is fair,
 3 adequate, and reasonable when few class members object to it); *Zepeda v. PayPal, Inc.*, 2017 WL
 4 1113293, at *16 (N.D. Cal. Mar. 24, 2017) (holding “the indisputably low number of objections
 5 and opt-outs, standing alone, presents a sufficient basis upon which a court may conclude that the
 6 reaction to settlement by the class has been favorable); *Cruz v. Sky Chefs, Inc.*, 2014 WL
 7 7247065, at *5 (N.D. Cal. Dec. 19, 2014) (“A court may appropriately infer that a class action
 8 settlement is fair, adequate, and reasonable when few class members object to it.”); *see also, e.g.*,
 9 *In re Carrier IQ, Inc., Consumer Privacy Litig.*, 2016 WL 4474366, at *4 (N.D. Cal. Aug. 25,
 10 2016) (stating that, “[i]n an analysis of settlements where notice relied on media notice
 11 exclusively, the claims rate ranged between 0.002% and 9.378%, **with a median rate of 0.023%**”)
 12 (emphasis added).
 13

14 Attorneys’ Fees and Costs

15 9. Class counsel requests a fee award of \$2,150,000 in attorneys’ fees and costs, to be
 16 paid directly by P&G. P&G does not oppose the fee request. The record is undisputed that the
 17 settlement negotiation was overseen by an experienced mediator and that no discussion of fees
 18 began until after all other terms of the settlement had been agreed. *See, e.g., In re Volkswagen*
 19 *“Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, 2017 WL
 20 1047834, at *4 (N.D. Cal., Mar. 17, 2017) (“Volkswagen’s agreement not to oppose the
 21 application does not evidence collusion and was not obtained by Class Counsel to Class
 22 Members’ detriment.”); *G. F. v. Contra Costa Cty.*, 2015 WL 4606078, at *13 (N.D. Cal. July 30,
 23 2015) (noting that “[t]he assistance of an experienced mediator in the settlement process confirms
 24 that the settlement is non-collusive”). Thus, the Court finds that the negotiations about fees, costs,
 25 and payments to the Class Representatives could not have had any negative impact on the benefits
 26 made available to class members.
 27

³ Class counsel has submitted evidence of the claims rates in similar, small-dollar product labeling cases in this District; in those cases, the rate of claims was less than one percent and 2.8%. Dkt. # 130-1, Ex. 1.

1 10. This Court is required to analyze an attorneys' fee request based on either (1) the
2 "lodestar" method or (2) a percentage of the total benefit made available to the settlement class,
3 including costs, fees, and injunctive relief. *See e.g., Nwabueze v. AT&T, Inc.*, No. C 09-01529 SI,
4 2014 WL 324262, at *2-3 (N.D. Cal. Jan. 29, 2014); *Lopez v. Youngblood*, No. CV-F-07-0474
5 DLB, 2011 WL 10483569, at *11-12 (E.D. Cal. Sept. 2, 2011); *Browning v. Yahoo! Inc.*, No.
6 C04-01463 HRL, 2007 WL 4105971, at *13-14 (N.D. Cal. Nov. 16, 2007). It is not appropriate to
7 base attorneys' fees based only on the amount paid to Class Members who submitted claims. *See*
8 *Williams v. MGM-Pathe Commc 'ns, Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997) ("We conclude that
9 the district court abused its discretion by basing the fee on the class members' claims against the
10 fund rather than on a percentage of the entire fund or on the lodestar."); *accord Ellsworth v. U.S.*
11 *Bank, N.A.*, 2015 WL 12952698, at *4 (N.D. Cal. Sept. 24, 2015) ("precedent requires courts to
12 award class counsel fees based on the total benefits being made available to class members rather
13 than the actual amount that is ultimately claimed") (emphasis added); *Miller v. Ghirardelli*
14 *Chocolate Co.*, 2015 WL 758094, at *5 (N.D. Cal. Feb. 20, 2015) (same); *Miller v. Sw. Airlines*
15 *Co.*, 2014 WL 11369764, at *2 (N.D. Cal. Mar. 21, 2014) (same). The Court concludes that the
16 lodestar approach is appropriate for this case, particularly since the primary form of relief is
17 injunctive. *See Yamada v. Nobel Biocare Holding AG*, 825 F.3d 536, 546 (9th Cir. 2016) ("The
18 "lodestar method" is appropriate in class actions where the relief sought and obtained is not easily
19 monetized, ensuring compensation for counsel who undertake socially beneficial litigation.").

20 11. Under the lodestar approach, "[t]he lodestar (or touchstone) is produced by
21 multiplying the number of hours reasonably expended by counsel by a reasonable hourly rate."
22 *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 26 (2000); *see also Kelly v. Wengler*,
23 822 F.3d 1085, 1099 (9th Cir. 2016) ("[A] court calculates the lodestar figure by multiplying the
24 number of hours reasonably expended on a case by a reasonable hourly rate. A reasonable hourly
25 rate is ordinarily the 'prevailing market rate [] in the relevant community.'") (alteration in
26 original) (internal citation omitted) (quoting *Perdue v/ Kenny A. ex rel. Winn*, 559 U.S. 542, 551
27 (2010)). Once the court has fixed the lodestar, it may increase or decrease that amount by
28 applying a positive or negative "multiplier to take into account a variety of other factors,

1 including the quality of the representation, the novelty and complexity of the issues, the results
2 obtained and the contingent risk presented.” *Id.*; *see also Serrano v. Priest (“Serrano III”), 20*
3 *Cal. 3d 25, 48-49 (1977); Ramos v. Countrywide Home Loans, Inc.* 82 Cal. App. 4th 615, 622
4 *(2000); Beasley v. Wells Fargo Bank, 235 Cal. App. 3d 1407, 1418 (1991)* (multipliers are used to
5 compensate counsel for the risk of loss, and to encourage counsel to undertake actions that benefit
6 the public interest). The Court should take into account the value of injunctive relief when
7 assessing fees under the lodestar approach, but need not determine a specific monetary value
8 associated with that relief. *See Hohenberg v. Drey (In re Ferrero Litig.), 583 F. App'x 665, 668*
9 *(9th Cir. 2014)* (“Under the lodestar method, a court need not determine the ‘value’ of particular
10 injunctive relief because fees are calculated through an assessment of time expended on the
11 litigation . . . the injunctive relief in this case is meaningful and consistent with the relief
12 requested in plaintiffs’ complaint. . . The district court did not abuse its discretion in approving a
13 settlement that compensated counsel under the lodestar method for procuring such relief.”);
14 *Laguna v. Coverall N. Am., Inc.*, 753 F.3d 918, 924 (9th Cir. 2014) *vacated on other grounds*,
15 772 F.3d 608 (9th Cir. 2014) (“[W]e have never required a district court to assign a monetary
16 value to purely injunctive relief. To the contrary, we have stated that courts cannot ‘judge with
17 confidence the value of the terms of a settlement agreement, especially one in which, as here, the
18 settlement provides for injunctive relief.’”); *Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir.
19 2003) (a district court still “should consider the value of the injunctive relief as a ‘relevant
20 circumstance’” in its fee determination).

21 12. Class Counsel has provided detailed declarations showing that it incurred a lodestar of
22 \$2,574,041.83. Having overseen this litigation for two years, the Court finds that the hours
23 claimed were reasonably worked and that the rates charged are reasonable and commensurate
24 with those charged by attorneys with similar experience who appear in this Court. The Court also
25 finds that Plaintiffs’ counsel represented their clients with skill and diligence and obtained an
26 excellent result for the class, taking into account the possible outcomes at, and risks of proceeding
27 to, trial.

28 13. Class counsel requests a fee award of \$1,888,388.89 (\$2,150,000 less costs and

1 expenses of \$261,611.11, discussed in the next paragraph) which equals approximately 73% of its
2 lodestar. Thus, far from any “upward” multiplier, Class Counsel’s requested fee actually results
3 in a “negative” (more accurately, a “fractional”) multiplier of 0.73. The fact that Plaintiffs’
4 counsel are seeking substantially less in fees than they reasonably incurred further demonstrates
5 the reasonableness of the fee award. *See, e.g., Schuchardt v. Law Office of Rory W. Clark*, 314
6 F.R.D. 673, 690-91 (N.D. Cal. 2016) (holding fractional lodestar multiplier to be indication of
7 reasonableness of fee request); *Johnson v. Triple Leaf Tea Inc.*, at *6 (N.D. Cal. Nov. 16, 2015)
8 (finding where “Class Counsel’s lodestar exceeded the negotiated award” to be “well within the
9 range courts have allowed in the Ninth Circuit”); *Lusby v. GameStop Inc.*, No. C12-03783 HRL,
10 2015 WL 1501095, at *4 (N.D. Cal. Mar. 31, 2015) (“Class Counsel’s lodestar . . . result[s] in
11 a negative multiplier of approximately .54. This is below the range found reasonable by other
12 courts in California.”); *Covillo v. Specialtys Café*, No. C-11-00594 DMR, 2014 WL 954516, at *7
13 (N.D. Cal. Mar. 6, 2014) (“Plaintiffs’ requested fee award is approximately 65% of the lodestar,
14 which means that the requested fee award results in a so-called negative multiplier, suggesting
15 that the percentage of the fund is reasonable and fair.”); *Walsh v. Kindred Healthcare*, No. C 11-
16 00050 JSW, 2013 WL 6623224, at *3 (N.D. Cal. Dec. 16, 2013) (“The Court concludes that, on
17 the facts of this case, the lodestar is reasonable, especially in light of the fact that Settlement Class
18 Counsel have applied a negative multiplier, and seek an award that is less than their
19 base lodestar.”); *Wehlage v. Evergreen at Arvin LLC*, No. 4:10-CV-05839-CW, 2012 WL
20 4755371, at *1 (N.D. Cal. Oct. 4, 2012) (“Class Counsel do not seek a multiplier on
21 their lodestar, and in fact the requested fee is a negative multiplier (-.79). The Court finds that this
22 award is appropriate here.”); *Lymburner v. U.S. Fin. Funding, Inc.*, No. C-08-00325 EDL, 2012
23 WL 398816, at *6 (N.D. Cal. Feb. 7, 2012) (“[T]he negative multiplier in this case supports the
24 reasonableness of the fee request.”); *In re Portal Software, Inc. Sec. Litig.*, No. C-03-5138 VRW,
25 2007 WL 4171201, at *16 (N.D. Cal. Nov. 26, 2007) (“Even if the court accepted the
26 unadjusted lodestar from plaintiffs’ counsel (\$922,884.75), the correlating multiplier of 0.74
27 would still reflect a negative multiplier, further suggesting that the requested percentage based fee
28

1 is fair and reasonable.”).⁴

2 14. Class counsel also are entitled to reimbursement of reasonable out-of-pocket
3 expenses. Fed. R. Civ. P. 23(h); *see Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (holding
4 that attorneys may recover reasonable expenses that would typically be billed to paying clients in
5 non-contingency matters.); *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal.
6 1995) (approving reasonable costs in class action settlement). Costs compensable under Rule
7 23(h) include “nontaxable costs that are authorized by law or by the parties’ agreement.” Fed. R.
8 Civ. P. 23(h). Here, class counsel seeks reimbursement of \$261,611.11 in litigation expenses and
9 provide records that document their claim. (Gutride Decl. Ex. 2; Zavareei Decl. Ex. 1; Scott Decl.
10 Ex. A.) The costs will be paid separately from amounts paid to class members who made valid
11 claims and will not in any way reduce what is paid to them. No objection has been made to any
12 cost item or amount. Accordingly, the Court finds that these submissions support an award
13 \$261,611.11 in costs.

14 **Class Representative Payments**

15 15. The district court must evaluate named plaintiffs’ payments individually, using
16 relevant factors including “the actions the plaintiff has taken to protect the interests of the class,
17 the degree to which the class has benefitted from those actions, . . . [and] the amount of time and
18 effort the plaintiff expended in pursuing the litigation.” *Staton v. Boeing Co.*, 327 F.3d 938, 977
19 (9th Cir. 2003). “Such awards are discretionary . . . and are intended to compensate class
20 representatives for work done on behalf of the class, to make up for financial or reputational risk
21 undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a
22 private attorney general.” *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958-959 (9th Cir.
23 2009). The Ninth Circuit recently emphasized that district courts must “scrutiniz[e] all incentive
24 awards to determine whether they destroy the adequacy of the class representatives.” *Radcliffe v.*
25

26

⁴ The Court is not required to perform a percentage based cross-check and finds it inappropriate
27 to do so here as the value of a permanent injunction requiring a label change is difficult to value
28 monetarily. *See Yamada v. Nobel Biocare Holding AG*, 825 F.3d 536, 547 (9th Cir. 2016)
(holding that if “classwide benefits are not easily monetized, a cross-check is entirely
discretionary,” and the district court may make its award based entirely on the lodestar).

1 *Experian Info. Solutions*, 715 F.3d 1157, 1163 (9th Cir. 2013). Here, the Plaintiffs came forward
2 to represent the interests of millions of others, with very little personally to gain, as their
3 individual alleged damages were very small. Plaintiff Jamie Pettit was deposed and had her home
4 plumbing inspected, compiled documents, and answered interrogatories in response to discovery
5 requests, regularly corresponded with counsel telephonically and by email, and took the
6 substantial risk of litigation which, at a minimum, involves a risk of losing and paying the other
7 side's costs. And she is signing a broader release than the rest of the class, including releasing her
8 claims for plumbing damage. Gutride Decl. ¶ 44. Thus, the Court approves a \$5,000 award for
9 Ms. Pettit.

10 16. Karla Ramcharitar, Gloria Wiltrakis, and Cheryl Senko were responsible for filing the
11 Ramcharitar action, and each alleges that they incurred expensive home repairs as a result of
12 using the Wipes. They took the substantial risk of litigation which, at a minimum, involves a risk
13 of losing and paying the other side's costs, and are signing a broader release than the rest of the
14 class, including releasing their claims for plumbing damage. This Court approves a \$3,000 award
15 for these three Plaintiffs.

16 17. Many of the remaining Plaintiffs allege they incurred expensive home repairs as a
17 result of using the Wipes. All are signing a broader release than the rest of the class, including
18 releasing their claims for plumbing damage. This Court approves a \$1,000 award for Debra
19 Jewell, Susan Hartzfel, Kenneth Luke, Linda Feiges, Willie Perez, Dian Cotton, Marlena Hinkle,
20 Phyllis Jones, Glenn Katz, Eilene Shaffer, Charles Tippe, Sandra Flores, and Roxy Vance.

21 **Final Approval of the Settlement**

22 18. The Court finds that the settlement is in all respects fair, reasonable, and adequate.
23 The Court therefore finally approves the settlement for all the reasons set forth in the Motion for
24 Final Approval including, but not limited to, the fact that the Settlement Agreement was the
25 product of informed, arms-length negotiations between competent, able counsel and conducted
26 with the oversight and involvement of an independent, well respected, and experienced mediator;
27 the record was sufficiently developed and complete through meaningful discovery and motion
28 proceedings to have enabled counsel for the Parties to have adequately evaluated and considered

1 the strengths and weaknesses of their respective positions; the cases involved disputed claims,
2 and these disputes underscore the uncertainty and risks of the outcome in this matter; the
3 settlement provides meaningful remedial and monetary benefits for the disputed claims; and the
4 Parties were represented by highly qualified counsel who, throughout this case, vigorously and
5 adequately represented their respective parties' interests.

6 19. The Settlement is in the best interests of the Settlement Class in light of the degree of
7 recovery obtained in relation to the risks faced by the Settlement Class in litigating the class
8 claims. The relief provided to the Settlement Class Members under the Settlement Agreement is
9 appropriate as to the individual members of the Settlement Class and to the Settlement Class as a
10 whole. All requirements of statute, rule, and Constitution necessary to effectuate the settlement
11 have been met and satisfied. The Parties shall continue to effectuate the Settlement Agreement in
12 accordance with its terms.

13 20. P&G is enjoined as follows for two years from the Effective Date, as defined in the
14 Settlement Agreement:

15 (a) On or before 90 days after the Effective Date, P&G will modify the
16 packaging of the Product to include a statement that "Your satisfaction is
17 guaranteed. For details of our refund program go to our website at
18 www._____ .com/_____. " P&G will provide details
19 regarding the satisfaction guarantee on the Charmin website, including
20 reasonable purchase price refunds to consumers who are dissatisfied with
21 the product;

22 (b) On or before 90 days after the Effective Date, P&G will modify the
23 packaging of the Product to include the statement: "Use only in well-
24 maintained plumbing systems";

25 (c) As of the Effective Date, the Product will comply with current and
26 future versions of the INDA Guidelines, including the slosh box test,
27 provided P&G is a member of INDA and the organization maintains the
same purpose and mission, with a similar membership composition, as of
the date of the Agreement;

28 (d) The Product marketed by P&G on or after June 13, 2018, will
29 comply with the May 2018 more stringent INDA GD4 test protocols which
30 (1) decrease the slosh box test duration from 180 minutes to 60 minutes,
31 (2) increase the slosh box test pass-through percentage requirement from
32 25% to 60%, and (3) decrease the municipal pump test average power
33 increase over baseline from 15% to 5%.

34 21. For avoidance of doubt, the distribution or sales by P&G of residual Product

1 manufactured prior to the implementation of the labeling changes described in paragraph 20; or
2 the distribution or sales by third parties of residual Product manufactured prior to the
3 implementation of the labeling changes described in paragraph 20, shall not constitute a violation
4 of the injunction issued herein.

5 22. All Valid Claims shall be paid according to the terms of and by the deadlines set forth
6 in the Settlement Agreement.

7 23. By operation of this Final Approval Order and Judgment, Plaintiffs on the one hand,
8 and the Released Parties on the other hand, shall have unconditionally, completely, and
9 irrevocably released and forever discharged each other from and shall be forever barred from
10 instituting, maintaining, or prosecuting (1) any and all claims, liens, demands, actions, causes of
11 action, obligations, damages or liabilities of any nature whatsoever, whether legal or equitable or
12 otherwise, known or unknown, that actually were, or could have been, asserted in the Included
13 Actions, based upon any violation of any state or federal statutory or common law or regulation,
14 and any claim arising directly or indirectly out of, or in any way relating to, the claims that
15 actually were, or could have been, asserted in the Included Actions, that Plaintiffs, on the one
16 hand, and P&G, on the other hand, have had in the past, or now have, related in any manner to the
17 Released Parties' products, services or business affairs; and (2) any and all other claims, liens,
18 demands, actions, causes of action, obligations, damages or liabilities of any nature whatsoever,
19 whether legal or equitable or otherwise, known or unknown, that Plaintiffs, on the one hand, and
20 P&G, on the other hand, have had in the past or now have, related in any manner to any and all
21 Released Parties' products, services or business affairs, or otherwise.

22 24. By operation of this Final Approval Order and Judgment, Settlement Class Members
23 shall have released and forever discharged the Released Parties from any and all claims, liens,
24 demands, actions, causes of action, obligations, damages or liabilities of any nature whatsoever,
25 known or unknown, whether arising under any international, federal, state or local statute,
26 ordinance, common law, regulation, principle of equity or otherwise, that were, or could have
27 been, asserted in the Included Actions regarding (i) the flushability or (ii) the safety for sewer and
28 septic of the Product and statements concerning the Product's (i) flushability or (ii) safety for

1 sewer and septic, except that there shall be no release of claims for personal injury or property
2 damage allegedly caused by use of the Product, nor any release of claims for purchases made in
3 New York.

4 25. Plaintiffs and P&G shall, by operation of this Final Approval Order and Judgment, be
5 deemed to have waived the provisions, rights and benefits of California Civil Code § 1542, and
6 any similar law of any state or territory of the United States or principle of common law. In
7 addition, Settlement Class Members shall, by operation of this Final Approval Order and
8 Judgment, be deemed to have waived the provisions, rights and benefits of California Civil Code
9 § 1542, and any similar law of any state or territory of the United States or principle of common
10 law, but only with respect to the matters released as set forth in paragraph 15 of this Order.

11 Section 1542 provides:

12 A general release does not extend to claims which the creditor does not know or suspect to
13 exist in his or her favor at the time of executing the release, which if known by him or her must
14 have materially affected his or her settlement with the debtor.

15 26. Nothing herein shall bar any action or claim to enforce the terms of the Settlement
16 Agreement.

17 27. No action taken by the Parties, either previously or in connection with the
18 negotiations or proceedings connected with the Settlement Agreement, shall be deemed or
19 construed to be an admission of the truth or falsity of any claims or defenses heretofore made or
20 an acknowledgment or admission by any Party of any fault, liability, or wrongdoing of any kind
21 whatsoever to any other Party. Neither the Settlement Agreement nor any act performed or
22 document executed pursuant to or in furtherance of the settlement: (a) is or may be deemed to be
23 or may be used as an admission of, or evidence of, the validity of any claim made by the
24 Settlement Class Members or Class Counsel, or of any wrongdoing or liability of the persons or
25 entities released under this Final Approval Order and Judgment and the Settlement Agreement, or
26 (b) is or may be deemed to be, or may be used as an admission of, or evidence of, any fault or
27 omission of any of the persons or entities released under this Final Approval Order and Judgment
28 and the Settlement Agreement, in any proceeding in any court, administrative agency, or other

tribunal. P&G's agreement not to oppose the entry of this Final Approval Order and Judgment shall not be construed as an admission or concession by P&G that class certification was appropriate in the cases or would be appropriate in any other action.

28. For the reasons stated in the ~~separate Order on Class Counsel's application for an award of attorneys' fees, costs, expenses and class representative payments~~, the following amounts shall be paid by P&G:

- a. Fees, costs, and expenses to Class Counsel: \$2,150,000.00
- b. Class representative payments
 - i. to Plaintiff Jamie Pettit: \$5,000.00
 - ii. to Plaintiff Karla Ramcharitar: \$3,000.00
 - iii. to Plaintiff Gloria Wiltrakis: \$3,000.00
 - iv. to Plaintiff Cheryl Senko: \$3,000.00
 - v. to Plaintiff Debra Jewell: \$1,000.00
 - vi. to Plaintiff Susan Hartzfel: \$1,000.00
 - vii. to Plaintiff Kenneth Luke: \$1,000.00
 - viii. to Plaintiff Linda Feiges: \$1,000.00
 - ix. to Plaintiff Willie Perez: \$1,000.00
 - x. to Plaintiff Dian Cotton: \$1,000.00
 - xi. to Plaintiff Marlena Hinkle: \$1,000.00
 - xii. to Plaintiff Phyllis Jones: \$1,000.00
 - xiii. to Plaintiff Glen Katz: \$1,000.00
 - xiv. to Plaintiff Eilene Shaffer: \$1,000.00
 - xv. to Plaintiff Charles Tippe: \$1,000.00
 - xvi. to Plaintiff Sandra Flores: \$1,000.00
 - xvii. to Plaintiff Roxy Vance: \$1,000.00

Such amounts shall be paid according to the terms of the Settlement Agreement.

29. The Court also has reviewed this District's Procedural Guidance for Class Action Settlements, which were adopted after the settlement was reached but with which the parties have

1 nevertheless substantially complied. In particular, the Court finds that the information provided
2 with respect to notice and the claims rate as well as the injunctive relief is sufficient to assure this
3 Court that there has been no disproportional benefit to the attorneys. The Court further finds that
4 Class Counsel has provided all the necessary information to support their fee award, including
5 detailed declarations describing the work performed by the various attorneys and firms involved.
6 Finally, the Class Representative Payments are supported by the fact that the plaintiffs were
7 involved in the litigation and executed broader releases, including releases for personal property
8 damage.

9 30. In accordance with the District's Procedural Guidance for Class Action Settlements,
10 the parties shall file a Post-Distribution Accounting report within 21 days of the distribution of
11 the settlement funds and attorneys' fees, and not later than 120 days from the date of this order.

12 31. This order shall constitute a final judgment binding the parties with respect to this
13 case.

14 32. Without affecting the finality of the judgment hereby entered, the Court reserves
15 jurisdiction over the interpretation, implementation and enforcement of the Settlement
16 Agreement. In the event the Effective Date does not occur in accordance with the terms of the
17 Settlement Agreement, then this Order and any judgment entered thereon shall be rendered null
18 and void and shall be vacated, and in such event, all orders and judgments entered and releases
19 delivered in connection herewith shall be null and void and the Parties shall be returned to their
20 respective positions *ex ante*.

21 33. Without further order of the Court, the Parties may agree to reasonable extensions of
22 time to carry out any provisions of the Settlement Agreement.

23 There is no just reason for delay in the entry of this Judgment, and immediate entry by
24 the Clerk of the Court is expressly directed.

25 **IT IS SO ORDERED** this 28th day of March, 2019.



1 Honorable Richard Seeborg
2 United States District Court Judge
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